

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RUDOLPH JETER JR.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORP.,	:	
	:	
Defendant.	:	NO. 98-1076

ORDER-MEMORANDUM

**AND NOW**, this **9th** day of **April, 1998** , upon consideration of defendant's motion to transfer this action (docket entry no. 4), and the response of plaintiff (docket entry no. 5), it is **ORDERED** that the motion is **GRANTED**.

It is further **ORDERED** that the Clerk shall cause a certified copy of the docket together with the case file to be delivered to the Clerk for the United States District Court for the Northern District of Ohio.

The reasoning of the Court is as follows:

This is a FELA<sup>1</sup> case concering an injury sustained by an employee of a railroad. Defendant seeks transfer of this action "for convenience of parties and witnesses [and] in the interest of justice . . . to [the Northern District of Ohio] where it might have been brought." 28 U.S.C. § 1404(a). The burden to establish the need for a transfer is

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<sup>1</sup> Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60.

on the moving party. See, e.g., Jumara v. State Farm Insurance Co., 55 F. 3d 873, 879 (3d Cir. 1995). ``Unless the balance of convenience of the parties is strongly in favor of defendant, the plaintiff's choice of forum should prevail.''' Shutte v. Armco Steel Corp., 431 F. 2d 22, 25 (3d Cir. 1970) (citation omitted), cert. denied, 401 U.S. 910 (1971). For transfer to be warranted, the moving party must first establish that venue would have been proper at the time of filing of the case in the proposed forum. In this case, both parties agree that at the time this action was commenced venue would have laid in the Northern District of Ohio. See 45 U.S.C. § 456 (venue proper in any district in which the defendant resides, in which the course of action arose, or in which the defendant was doing business at the commencement of the action).

When considering transfer under 28 U.S.C. § 1404(a), courts in this district have informed their discretion by reference to the "private" and "public" factors identified by the Supreme Court in Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947), as these factors were recently supplemented and explained by the Third Circuit in Jumara, 55 F. 3d 873. Private factors relevant to this action include: (1) relative ease of access to sources of proof; (2) ability to serve

unwilling witnesses and the cost of obtaining this attendance at trial; (3) practical problems that make a trial of a case easy, expeditious, and inexpensive; (4) plaintiff's forum choice; (5) the defendant's forum choice; (6) where the claim arose; (7) the relative physical and financial condition of the parties; and (8) the location of books and records. Public factors relevant to this case include: (1) administrative difficulties flowing from court congestion and (2) the local interest in local adjudication of local controversies. See Gulf Oil, 330 U.S. at 508-09; Jumara, 55 F. 3d at 879-80.

In this case, plaintiff resides in the Northern District of Ohio. The accident took place in the Northern District of Ohio, and it is in that district where likely witnesses live or work. The only factor counseling against transfer is the location of defendant's books and records in Pennsylvania. While plaintiff has not claimed that he will be inconvenienced by having to obtain defendant's books and records in Philadelphia, Pennsylvania if the case is transferred to the Northern District of Ohio, the Court will condition the transfer upon production by defendant of its books and records in the Northern District of Ohio for both discovery and for trial purposes, if requested to do so by plaintiff. On balance, therefore, the private factors

relevant to this case clearly favor transfer.

The relevant public factors also counsel in favor of transfer. Of these factors, the most important is that "the interest of justice will be served by having this matter decided by a jury drawn from the community where the incident occurred and where the plaintiff and the likely witness[es] reside." Lynn v. Consolidated Rail Corp., No. 94-408, 1994 WL 185032 (E.D. Pa. 1994). See Gilbert, 330 U.S. at 509 ("there is a local interest in having [legal] controversies decided at home"). On the other hand, plaintiff has not identified any problems of calendar congestion in the Northern District of Ohio which militate against transfer. The public factors, therefore, also support transfer to the Northern District of Ohio.

Plaintiff's basic argument is that his choice of forum in this case should control. While it is true that ordinarily the plaintiff's choice of forum is entitled to substantial deference in § 1404(a) analysis, see Shutte, 431 F. 2d at 25, such choice is entitled to less deference when neither plaintiff resides in the forum district nor did any of the events occur there. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 n 23 (1981). See, e.g., Lynn, 1994 WL 185032 (transferring the case to the Western District of Pennsylvania where the plaintiff did not reside nor did the accident occur

in the Eastern District of Pennsylvania). Given that plaintiff does not reside in this district and none of the events occurred here, plaintiff's choice of forum is not controlling in this case.

**AND IT IS SO ORDERED.**

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**EDUARDO C. ROBRENO, J.**